

**CAUTION:** The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

**IC 4-2-6-9(a) Conflicts of interest**

**40 IAC 2-1-8 Moonlighting**

A third party examiner under contract with the BMV to perform CDL exam skills testing for state-supported and non-profit organizations wanted to provide schools and companies with a program for trainers to educate drivers on what was necessary to pass both the skills and written portions of the CDL exam. SEC found the examiner was prohibited from providing this program and explained that the definition of state employee should be interpreted to apply if the employee is working thirty hours per week.

**92-I-4 Conflict of Interest, Moonlighting  
(Decision February 20, 1992)**

**FACT SITUATION**

A person who was a third party examiner under contract with the Bureau of Motor Vehicles to do skills testing for the Commercial Driver's License exam for state supported and non-profit organizations wanted to offer to schools and commercial companies a program to train trainers to teach their drivers what was necessary to pass both the skills and written part of the Commercial Driver's License Exam. The examiner did not meet the statutory definition of employee (IC 4-2-6-1(7)) because he did not work enough hours for the state on contract. The State Ethics Commission agreed to hear the inquiry and offer an advisory opinion because the examiner thought he might work a sufficient number of hours in the near future.

The training the examiner would do would be based on state regulations and state exam. The examiner gained his knowledge and experience from being an examiner for Mayflower who is the authority in the state of Indiana for training CDL examiners. In work for the state, the examiner and one other examiner were responsible for the southern part of the state and examined in six different locations (Poseyville, North Vernon, Bedford, New Castle, Terre Haute-Vigo Schools, and Pike Township).

**QUESTION**

Is a person who is a third party examiner under contract with the Bureau of Motor Vehicles to do skills testing for the Commercial Driver's License exam for state supported and non-profit organizations permitted to offer to schools and commercial companies a program to train trainers to teach their drivers what is necessary to pass both the skills and written part of the Commercial Driver's License exam?

**OPINION**

The Commission found that an employee on third party contract with the Bureau of Motor Vehicles who is an examiner doing skills testing of bus drivers of state supported and non-profit organizations is prohibited from offering to schools and commercial companies a program to train trainers to teach their drivers what is necessary to pass both the skills and written part of the Commercial Driver's License exam.

The Commission indicated the definition of state employee should be interpreted to apply if the employee is working at a thirty hour a week rate; the rule should not allow twenty-five free weeks a year. As long as the third party contract examiner does not qualify as a state employee under the Commission's definition, any action to be taken or decision to be made regarding this situation is left to the Bureau of Motor Vehicles. The Commission expressed its concern with the dual role of an examiner for the state being in a private business training people to train others to comply with the tests.

The relevant rules are as follows:

40 IAC 2-1-8 on moonlighting provides, " A state employee shall not engage in outside employment or other outside activity not compatible with agency rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity must not impair independence of judgment as to official responsibilities, pose a likelihood of conflict of interest, or require or create an incentive for the employee to disclose confidential information acquired as a result of official duties."

IC 4-2-6-9(a) on conflicts of interest provides, " A state officer or employee may not participate in any decision or vote of any kind in which the state officer or the employee or that individual's spouse or unemancipated children has a financial interest."